

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
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Report Summary

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Hon. Joyce L. Kennard, Chair
Ben McClinton, Committee Counsel (415) 865-7711

DATE: March 27, 2000

SUBJECT: Appellate Writs—Early Finality and Format Requirements
(amend rules 24(d) and 56(a), (d)) **(Action Required)**

Issue statement

The principal attorneys of the appellate courts made several proposals to facilitate writ proceedings in the courts.

Proposed amendments to rules concerning writs would remedy the following problems:

- (1) *Early finality*—Under current rules, a Court of Appeal cannot order early finality of a *denial* of a writ after issuance of an alternative writ or order to show cause, even though it may do so after *granting* a peremptory writ. This anomaly restricts the court's discretionary power to make the denial effective immediately, and that may unnecessarily delay the trial court proceedings.
- (2) *Form of the petition*—The rules applicable to writs do not include several provisions concerning the form of briefs, making it unclear what the requirements are.
- (3) *Exhibits' volume size needs limits*—Supporting documents are sometimes so large they fall apart as court personnel try to handle them.
- (4) *Uncertain page references*—Current rules require each exhibit to be numbered consecutively, but if there are many exhibits references to them are unclear unless multiple volumes are paginated consecutively among *all* the volumes.
- (5) *Expired provision*—One paragraph of rule 56(a) expired by its own terms in 1994.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective July 1, 2000:

1. Amend rule 24(d) to allow a Court of Appeal discretion to order early finality when a writ petition is *denied* after issuance of an alternative writ or an order to show cause;
2. Amend rule 56(a) to require writ petitions to comply with rule 15, insofar as it is practicable to do so, unless rules 56–60 specifically provide otherwise;
3. Amend rule 56(d) to limit each volume of supporting documents to 300 pages;
4. Amend rule 56(d) to require that exhibits in multiple volumes be paginated consecutively as a whole; and
5. Amend rule 56(a) to delete the final paragraph, an expired provision that temporarily granted an exemption from the requirement that the attorney’s State Bar number appear on the cover of the petition.

The text of the amended rules is attached at pages 4–5.

Rationale for recommendations

- *Early finality* Rule 24 now allows a Court of Appeal to order that a decision *granting* a peremptory writ within its original jurisdiction may become final after a period less than 30 days. The advisory committee proposes that rule 24(d) be amended to allow a court to order early finality when a writ petition is *denied* after issuance of an alternative writ or an order to show cause. Allowing the court, “in the interest of justice,” to make these denials final immediately would prevent unnecessary delay of the trial court proceedings. Early finality is especially important in juvenile cases where references are now reviewed by writ. The reference to a “peremptory writ” has been changed to “writ.” With the addition of the new language it becomes ambiguous whether the issuance of peremptory writs in the first instance—as well as those following an alternative writ—may be granted early finality. Eliminating the word “peremptory” makes it clear that all decisions in which relief is granted may be given early finality.
- *Form of the petition* The current rules pertaining specifically to writs do not include several of the provisions applicable to the form of briefs. For example, for writs no page limit is specified, and petitions are not specifically required to support statements in the record by direct reference to the record. To make clear that the brief requirements do apply generally to writ petitions, the advisory committee proposes

that rule 56(a) be amended to require writ petitions to comply with rule 15, insofar as it is practicable to do so, unless rules 56–60 specifically provide otherwise.

- *Limit on volume size* Rule 56(d) sets out requirements for the form of supporting documents. These documents may be bound either with the petition or separately. If a volume of supporting documents (with or without a petition) has too many pages, however, it tends to fall apart. The advisory committee proposes that each volume be limited to 300 pages.
- *Consecutive pagination of exhibits* Rule 56(d) requires “each exhibit” to be paginated consecutively. The advisory committee proposes that *all* exhibits in the volumes be paginated consecutively as a whole for clarity and uniformity of reference.
- *Technical amendment* The advisory committee proposes deleting an expired provision, the final paragraph of rule 56(a), which temporarily granted an exemption until July 1, 1994, from the requirement that the attorney’s State Bar number appear on the cover of the petition.

Alternative actions considered

No reasonable alternative actions were apparent to the committee, and none were proposed by the commentators (except as noted in the comments section below).

Comments from interested parties

The proposals were regularly circulated for comment during the Winter 2000 comment period, December 23 through February 22 (item W00-3).

The Rules Amendments Subcommittee considered carefully the 10 comments that were submitted. All 10 respondents favored the proposal. One respondent, however, suggested that the term *interest of justice* be defined. The advisory committee believes that the term cannot be easily defined in a rule and that the concept is developed in case law.

A chart showing the comments and the committee’s responses is attached at pages 6–7.

Implementation requirements and costs

The courts and staff should not need to take any significant steps to implement the recommendations, and no serious impediments to implementation are apparent. The recommended actions will result in no significant costs to the courts or this office.

Attachments

RULE AMENDMENTS

Appellate Writs

Rules 24 and 56 of the California Rules of Court are amended effective July 1, 2000, to read:

1 **Rule 24. Decision of reviewing court**

2
3 **(a)–(c) *****

4
5 **(d) [Discretionary early finality]** Notwithstanding subdivision (a), a Court
6 of Appeal may order that a decision granting a ~~peremptory writ—or~~
7 denying a writ after issuance of an alternative writ or an order to show
8 cause—within its original jurisdiction shall become final as to that court
9

10 (1) Within a stated period less than 30 days, or

11
12 (2) ~~that it shall be final as to that court~~ Immediately, if early finality is
13 necessary to prevent mootness or to prevent frustration of the relief
14 granted or is otherwise necessary in the interest of justice.
15

16 **Rule 56. Original proceedings**

17
18 **(a) [Form and content of petition]** A petition to a reviewing court for a writ
19 of mandate, certiorari, or prohibition, or for any other writ within its
20 original jurisdiction, must be verified and shall set forth the matters
21 required by law to support the petition, and also the following:
22

23 (1) If the petition might lawfully have been made to a lower court in the
24 first instance, it shall set forth the circumstances ~~which that~~, in the
25 opinion of the petitioner, render it proper that the writ should issue
26 originally from the reviewing court;
27

28 (2) If any judge, court, board, or other officer or tribunal in the discharge
29 of duties of a public character be named therein as respondent, the
30 petition shall disclose the name of the real party in interest, if any, or
31 the party whose interest would be directly affected by the proceeding;
32 and
33

34 (3) If the petition seeks review of trial court proceedings that are also the
35 subject of a pending appeal, the title of the petition shall include the
36 notation “Related Appeal Pending,” and the first paragraph shall set
37 forth:

1 (i) (A) The title, superior court docket number, and appellate court
2 docket number, if any, of the pending appeal, and
3

4 (ii) (B) If the petition is brought ~~pursuant to~~ under Penal Code
5 section 1238.5, the date of filing of the notice of appeal.
6

7 Except as otherwise provided in rules 56–60, a petition shall, insofar as
8 practicable, comply with rule 15.
9

10 The cover of the petition shall contain the title of the case, the name,
11 address, and telephone number of the attorney filing the petition, the name
12 of the trial judge, and the number of the case in the trial court, if any. The
13 cover shall also contain the California State Bar membership number of
14 the attorney filing the petition and of every attorney who joins in the
15 petition. California State Bar membership numbers of the supervisors in a
16 law firm or public law office of the attorney responsible for the case need
17 not be stated.
18

19 ~~Until July 1, 1994, a petition shall not be rejected for filing because the~~
20 ~~attorney's California State Bar membership number does not appear on the~~
21 ~~cover, but it may be stricken if the attorney does not furnish the number~~
22 ~~promptly upon request by the clerk.~~
23

24 **(b)–(c) *****
25

26 **(d) [Supporting documents—tabbed, paginated, and listed]** Documents
27 submitted in support of the petition shall
28

29 (1) Be bound together at the end of the petition or in a separate volumes
30 not to exceed 300 pages each, with consecutive pagination
31 throughout;
32

33 (2) Be index-tabbed by number or letter,~~with each exhibit consecutively~~
34 ~~paginated;~~ and
35

36 (3) Begin with a table of contents listing each document by title and its
37 index-tab number or letter.
38

39 The clerk shall accept for filing petitions and supporting documents not in
40 compliance with this subdivision; but the court may give the petitioner
41 notice requiring that the petition and documents be brought into
42 compliance within a stated reasonable time, or the petition may be stricken
43 or denied summarily.
44

(e)–(h) * * *

Comments for
Appellate writs—Early finality and format requirements
 (Cal. Rules of Court, rules 24(d), 56(a), (d))

	Commentator	Position	Comment on Behalf of Group	Comments	Committee Response
1.	Hon. Phrasel L. Shelton, Chair, Rules Committee Superior Court of San Mateo County	A	Yes	No comments.	N/A
2.	Hon. Paul Turner Presiding Justice Court of Appeal, Second Appellate District	A		The proposed change to rule 24(d)(2) is a wise idea. This amendment will particularly be useful in rule 39.1B petition cases which challenge a decision to set a dependency proceeding for a Welfare and Institutions Code section 366.26 selection and implementation hearing. In a significant number of cases, the final adoption of a child is delayed because of the present finality requirement. I would suggest the proposed rule change to be sent to the council at the earliest possible date. Its effect in concluding adoption proceedings will touch numerous children and adoptive parents in a positive way.	N/A
3.	Dennis Peter Maio, Member Committee on Administration of Justice	A		Agree with proposed changes.	N/A
4.	A. Mestman Research Attorney Superior Court of San Diego County	A			N/A
5.	James C. Martin, Chair Committee on Appellate Courts, Los Angeles County Bar Association	A	Yes	Our committee favors each one of these changes and believes that they are excellent additions to the rules.	N/A

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

6.	Hon. Mary E. Fuller Judge Superior Court of San Bernardino County	A		No comments.	N/A
7.	Julie Ann Burton Superior Court of Yolo County	A		No comments.	N/A
8.	Darin L. Wessell, Co-Chair, Civil Rules Subcommittee, Appellate Courts Committee, San Diego County Bar Association	AM	Yes	The Appellate Courts Committee of the San Diego County Bar Association approved the proposed rule change (Item W00-3) with the following suggestion: “Interest of justice” should be defined to mean a case by case determination of whether the case warrants early finality. The general concern expressed by members of the civil rules sub-committee is that some courts may seek to use early finality as a means to clear the court docket.	The Appellate Advisory Committee believes the term “interest of justice” cannot be easily defined in a rule, but the concept is developed in case law.
9.	Emry Allen Office of State Public Defender		Yes	No objection to the proposals.	N/A
10.	Hannah Inouye John A. Clarke Superior Court of Los Angeles County		Yes	No comments.	N/A

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.